

³ The Board notes that, following the January 4, 2021 decision, OWCP received additional evidence. However, the Board's *Rules of Procedure* provides: "The Board's review of a case is limited to the evidence in the case record that was before OWCP at the time of its final decision. Evidence not before OWCP will not be considered by the Board for the first time on appeal." 20 C.F.R. § 501.2(c)(1). Thus, the Board is precluded from reviewing this additional evidence for the first time on appeal. *Id.*

ISSUES

The issues are: (1) whether OWCP properly determined that appellant received an overpayment of compensation in the amount of \$8,619.08, for the period July 1, 2018 through August 15, 2020, for which she was without fault, because she concurrently received FECA wage-loss compensation and Social Security Administration (SSA) age-related retirement benefits, without an appropriate offset; (2) whether OWCP properly denied waiver of recovery of the overpayment; and (3) whether OWCP properly required recovery of the overpayment by deducting \$200.00 from appellant's continuing compensation payments every 28 days.

FACTUAL HISTORY

On February 1, 2001 appellant, then a 45-year-old modified letter carrier, filed an occupational disease claim (Form CA-2) alleging that she sustained injuries to her left shoulder and neck causally related to factors of her federal employment. Her supervisor noted on the form that her retirement coverage was Federal Employees Retirement System (FERS). OWCP accepted the claim for acute exacerbation of the neck myalgia/cervicalgia, left shoulder and upper arm acromioclavicular sprain, and left rotator cuff sprain. The record reflects that OWCP paid appellant wage-loss compensation on the supplemental rolls as of August 15, 2001 and continually on the periodic rolls as of October 28, 2007.

On July 2, 2020 OWCP forwarded a FERS/SSA dual benefits calculation worksheet to SSA. On August 10, 2020 it forwarded a second FERS/SSA dual benefits calculation worksheet to SSA to obtain information as to whether an offset of compensation benefits was required.

On August 13, 2020 OWCP received from SSA a FERS/SSA dual benefits calculation form, completed on July 18, 2020, which indicated that appellant had been in receipt of SSA age-related retirement benefits since July 2018. The form showed her SSA benefit rates with and without a FERS offset. Beginning July 2018, the SSA rate with FERS was \$899.30 and without FERS was \$631.30; beginning December 2018, the SSA rate with FERS was \$924.40 and without FERS was \$648.90; and beginning December 2019, the SSA rate with FERS was \$939.20 and without FERS was \$659.20.

On August 13, 2020 OWCP received a FERS/SSA dual benefits calculation transmittal completed by SSA on August 13, 2020 which indicated that appellant had been in receipt of SSA age-related retirement benefits since July 2018. The form related appellant's SSA benefits with and without FERS offset since July 2018. Beginning July 2018, the SSA rate with FERS was \$899.30 and without FERS was \$572.00, beginning December 2018, the SSA rate with FERS was \$924.40 and without FERS was \$588.00, and beginning December 2019, the SSA rate with FERS was \$939.20 and without FERS was \$597.30.

Utilizing the FERS/SSA dual benefits calculation transmittal completed on August 13, 2020. OWCP completed a FERS offset calculation worksheet on August 13, 2020. This form indicated that, from July 1 through November 30, 2018, appellant received an overpayment in the amount of \$1,650.89, from December 1, 2018 through November 30, 2019 she received an overpayment in the amount of \$4,047.89, and from December 1, 2019 through August 15, 2020 she received an overpayment in the amount of \$2,919.30. Based on these figures, OWCP calculated the total overpayment amount of \$8,618.08.

On August 17, 2020 OWCP issued a preliminary overpayment determination, finding that an overpayment of compensation in the amount of \$8,619.08 had been created because it had failed to reduce appellant's wage-loss compensation payments for the period July 1, 2018 through August 15, 2020, to offset her SSA age-related retirement benefits that were attributable to her federal service. It determined that she was without fault in the creation of the overpayment because she could not have reasonably known that an improper payment had occurred, due to the complexity in benefits administration. OWCP explained that it was not able to obtain the necessary information from SSA to reduce appellant's benefits in a timely manner. It requested that she submit a completed overpayment recovery questionnaire (Form OWCP-20) to determine a reasonable payment method and advised her that she could request a waiver of the overpayment. OWCP further requested that appellant provide supporting financial documentation, including copies of income tax returns, bank account statements, bills, pay slips, and any other records to support income and expenses. Additionally, it provided her with an overpayment action request form and further notified her that, within 30 days of the date of the letter, she could request a telephone conference, a final decision based on the written evidence, or a prerecoupment hearing.

In an August 18, 2020 letter, OWCP informed appellant that it would begin deducting \$315.60, the portion of SSA age-related retirement benefits attributable to her federal service, from her 28-day periodic compensation benefits.

On August 25, 2020 appellant requested a prerecoupment hearing, which was held telephonically on November 2, 2020. She indicated that she supported her grandson and her husband. Appellant was allotted 30 days to submit additional financial information.

On December 16, 2020 OWCP received appellant's November 14, 2020 Form OWCP-20. Appellant reported total monthly income of \$3,638.00 and total monthly expenses of \$3,229.16.

By decision dated January 4, 2021, the hearing representative finalized the preliminary overpayment determination, finding that appellant had received an overpayment of compensation in the amount of \$8,619.08 for the period July 1, 2018 through August 15, 2020, because she concurrently received SSA age-related retirement benefits and FECA wage-loss compensation without an appropriate offset. He also found that she was without fault in the creation of the overpayment, but denied waiver of recovery of the overpayment. The hearing representative explained that appellant listed her income as \$3,638.00, subtracted her expenses of \$3,229.16, and noted that her monthly income exceeded her expenses by \$408.84. Therefore, as appellant's monthly income exceeded expenses by more than \$50.00, he denied waiver of recovery of the overpayment. The hearing representative explained that, because she failed to meet the first prong of the two-prong test of whether recovery of the overpayment would defeat the purpose of FECA, it was not necessary to consider the second prong of the test based on assets. He related that the overpayment would be recovered by deduction of \$200.00 every 28 days from appellant's continuing compensation payments.

LEGAL PRECEDENT -- ISSUE 1

Section 8102(a) of FECA provides that the United States shall pay compensation for the disability of an employee resulting from personal injury sustained while in the performance of his or her federal employment.⁴ Section 8116 limits the right of an employee to receive compensation:

⁴ 5 U.S.C. § 8102(a).

While an employee is receiving compensation, he or she may not receive salary, pay, or remuneration of any type from the United States.⁵ When an overpayment has been made to an individual because of an error of fact or law, adjustment shall be made under regulations prescribed by the Secretary of Labor by decreasing later payments to which the individual is entitled.⁶

Section 10.421(d) of the implementing regulations requires that OWCP reduce the amount of compensation by the amount of any SSA age-related benefits that are attributable to federal service of the employee.⁷ FECA Bulletin No. 97-09 provides that FECA benefits have to be adjusted for the FERS portion of SSA benefits because the portion of the SSA benefit earned as a federal employee is part of the FERS retirement package, and the receipt of FECA benefits and federal retirement concurrently is a prohibited dual benefit.⁸

ANALYSIS -- ISSUE 1

The Board finds that the fact of overpayment has been established.

The evidence of record indicates that, while appellant was receiving wage-loss compensation benefits under FECA, she was also receiving SSA age-related retirement benefits based upon her federal service. A claimant cannot receive both compensation for wage-loss compensation benefits under FECA and SSA age-related retirement benefits attributable to federal service for the same period.⁹ The information provided by SSA established that appellant received SSA age-related retirement benefits that were attributable to federal service during the period July 1, 2018 through August 15, 2020. Consequently, the fact of overpayment has been established.

The Board finds, however, that the case is not in posture for decision with respect to the amount of the overpayment. To determine the amount of the overpayment, the portion of SSA benefits that were attributable to federal service must be calculated. OWCP received documentation from SSA with respect to the specific amount of SSA age-related retirement benefits that were attributable to federal service. SSA provided its rate with FERS and without FERS for the period July 1, 2018 through August 15, 2020. However, OWCP received two FERS/SSA dual calculation transmittal forms, the first dated July 18, 2020 and the second dated August 13, 2020, with differing amounts of SSA benefits with FERS shown. It is required by statute and regulations to make findings of fact and provide a statement of reasons.¹⁰ The Board has held that, in overpayment cases, it is essential that OWCP provide the recipient of

⁵ *Id.* at § 8116.

⁶ *Id.* at § 8129(a).

⁷ 20 C.F.R. § 10.421(d); *see R.R.*, Docket No. 19-0104 (issued March 9, 2020); *T.B.*, Docket No. 18-1449 (issued March 19, 2019); *L.J.*, 59 ECAB 264 (2007).

⁸ FECA Bulletin No. 97-09 (issued February 3, 1997).

⁹ 20 C.F.R. § 10.421(d); *see L.J.*, *supra* note 7.

¹⁰ *See M.M.*, Docket No. 19-1914 (issued April 9, 2021); 5 U.S.C. § 8124(a) provides that OWCP shall determine and make a finding of fact and an award for or against payment of compensation. 20 C.F.R. § 10.126 provides that OWCP's final decision shall contain findings of fact and a statement of reasons. *See also H.B.*, Docket No. 19-0356 (issued March 20, 2020).

compensation with a clear statement showing how the overpayment was calculated. Although the record establishes that appellant received SSA age-related retirement benefits which were attributable to her federal service, it is not clear how the amount of the overpayment was derived. OWCP has not offered an explanation for the discrepancy in the SSA benefit figures of record and used in its calculations.

For these reasons, the Board finds that there is a question regarding whether the overpayment was calculated correctly for the period July 1, 2018 through August 15, 2020. Accordingly, the Board finds that the case must be remanded to OWCP. On remand OWCP shall clarify the discrepancy between the figures provided by SSA to OWCP. It shall then determine the amount of the overpayment of compensation and issue a new preliminary overpayment determination. Following this, and other such further development as deemed necessary, OWCP shall issue a *de novo* decision.¹¹

CONCLUSION

The Board finds that fact of overpayment is established. The Board further finds that the case is not in posture for decision regarding the amount of the overpayment.¹²

¹¹ See *S.H.*, Docket No. 20-1189 (issued January 27, 2021).

¹² In light of the Board's disposition of Issue 1, Issues 2 and 3 are rendered moot.

ORDER

IT IS HEREBY ORDERED THAT the January 4, 2021 decision of the Office of Workers' Compensation Programs is affirmed in part and set aside in part. This case is remanded for further proceedings consistent with this decision of the Board.

Issued: September 28, 2021
Washington, DC

Janice B. Askin, Judge
Employees' Compensation Appeals Board

Patricia H. Fitzgerald, Alternate Judge
Employees' Compensation Appeals Board

Valerie D. Evans-Harrell, Alternate Judge
Employees' Compensation Appeals Board